Twentieth Annual Report 1990/91

Manitoba
Law Reform
Commission

Manitoba

Law Reform Commission

Commission de réforme du droit

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TWENTIETH ANNUAL REPORT

1990-91

March 31, 1991

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The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

Commissioners:

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John C. Irvine
Hon. Mr. Justice Gerald O. Jewers
Eleanor R. Dawson, Q.C.
Hon. Pearl K. McGonigal

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Jeffrey A. Schnoor

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Manitoba Law Reform Commission

The Manitoba Law Reform Commission is an agency of and is primarily funded by the Government of Manitoba.

The Manitoba Law Foundation

Additional funding is received from The Manitoba Law Foundation.

Some of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from the Publications Branch, Office of the Queen's Printer, 200 Vaughan Street, Winnipeg, Manitoba R3C 1T5.

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A. INTRODUCTION

The mission of the Manitoba Law Reform Commission is easy to state, though more difficult to achieve: to keep the law in tune with the times. This is a challenging task, particularly in a legal system where much of the law is not to be found in statutes. Our common law system is based on precedent. This means that the solution to a specific case today is generally to be found in similar cases from the past. As a result, much of the law which governs our daily lives can be traced back to decisions made by judges in the 17th, 18th or 19th centuries; in some cases, the law can be traced back to decisions made as long ago as the 13th or 14th centuries. It is not difficult to imagine that the social conditions which gave rise to those decisions have changed in the last few centuries.

It is trite to say that, in order to change the law, it is necessary to know and understand it. A knowledge of its current provisions and an appreciation of its historical origin are needed as a starting point for reform. For this reason, lawyers must, of necessity, play a key role in the process of law reform.

However, the Manitoba Law Reform Commission has always recognized that law reform which is exclusively the province of lawyers inevitably lacks legitimacy. Non-lawyers must also be involved in the process in an active and meaningful way.

Since its inception, the Manitoba Law Reform Commission has always had at least one non-lawyer as a Commissioner (in fact, three of the first seven Commissioners were non-lawyers). At one time, ours was the only law reform body in Canada to have a non-lawyer among its members. These citizen members have added immeasurably to our work. They have brought new perspectives to our deliberations and have challenged the assumptions which lawyers too often make. They have also served as a check on the tendency for lawyers to speak and write in "legalese" and (we hope) forced us to express ourselves in a clearer and more understandable fashion.

We have also attempted to reach out to the community and involve it in the process of law reform by asking it to play a part in the formulation of our recommendations. We have recognized that some of the issues with which we deal call for more extensive consultation with the public. In order to accomplish this, we publish Discussion Papers from time to time. These Discussion Papers are distributed amongst interested groups and individuals and serve as our invitation to them to comment on the issues which they raise and to express their views on the direction which law reform should take. We carefully consider all submissions which we receive in response to Discussion Papers; they are an important means of ensuring that our law reform proposals are responsive to the concerns of the public.

During the year which is the subject of this Annual Report, we issued several important Discussion Papers dealing with issues ranging from living wills to land law to sterilization. In each case, we recognized the sensitivity of the issues before us and felt it important to seek out the views of a broad cross-section of our society prior to the formulation of our recommendations. The responses which we have received and continue to receive to our Discussion Papers have justified our confidence in the importance of this form of public consultation.

B. THE COMMISSION'S MANDATE

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act*. Royal assent was accorded to the Act on July 21, 1970 and it came into force on October 1, 1970. This Act was replaced by a new Act which came into force on March 8, 1990 (the Act is reproduced in Appendix A). The Commission's duties, as set out in section 6 of the Act, are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including:

a) the removal of provisions which are outdated or inconsistent,

b) the maintenance and improvement of the administration of justice,

c) the review of judicial and quasi-judicial procedures under any Act, and

d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of society.

The recommendations of the Commission are made to the Minister of Justice and Attorney General and are then made publicly available through the publication of our Reports. The decision whether to proceed with these recommendations by introducing legislation in the Legislature then rests with the Minister and his or her Cabinet colleagues. As noted later in this Annual Report, our rate of success in achieving this implementation has been very gratifying.

Although references from the Minister must be given priority, the Commission also receives suggestions for projects from various sources, including judges, law professors, lawyers, interest groups and members of the public. We are grateful for all suggestions and encourage anyone interested in law reform to point out to us areas which they encounter which they believe require review. Although our limited resources do not permit us to take on every matter which is referred to us, anyone suggesting a topic can be assured that it will receive careful consideration.

C. OPERATIONAL OBSERVATIONS

1. Meetings

The Commission held eighteen meetings from April 1, 1990 to March 31, 1991. The minimum number of meetings required by *The Law Reform Commission Act* is four meetings annually.

2. Budget

As an agency of the Government of Manitoba, the Commission's budget is appropriated by the provincial Government and approved by the Legislature. For the 1990-91 fiscal year, the Commission's budget was approved at $379,100, an increase of $19,400 from the previous year.

As noted in our last Annual Report, the Commission is now able to receive funds from other sources and we were most fortunate to receive two grants from the Manitoba Law Foundation in the amount of $31,500 each. These grants have greatly assisted us in our work in the field of the law of trusts and also permitted us to begin research on a project on laws relating to animals. We wish to thank the Law Foundation for their support of the Commission's work.

3. Personnel

After many years of negotiation, and as a result of the enactment of our new legislation, the Legal Counsel positions of the Commission were converted to Civil Service status on May 1, 1990. We are confident that this conversion will create a more secure work environment for our legal staff and allow them to contemplate a career in law reform.

Barbara Hendrickson joined our staff in late April 1990 and she has been engaged on a new project referred to us by the Minister of Justice on the self-regulating status of professions and occupations. Susan Billinkoff has also been hired, on a short term contract, to assist Ms Hendrickson on the professions and occupations project.

As noted in our last Annual Report, we had retained Denyse Côté and Debra Hathaway on short term contracts. Both have now completed these contracts and have moved on to other endeavours.

With respect to the Law Foundation grants, Jayne Kapac completed her contract on the law of trusts in July 1990 and has left the Commission for a position with Legal Aid Manitoba. She was replaced by Karen Beauchamp who will continue the work on this project. A contract was also entered into with Priti Shah as a result of the second grant received from the Law Foundation; this grant will permit us to examine several aspects of the law respecting animal protection and control.

Although the STEP programme was unable to fund a student for the summer months, internal savings in our budget permitted us to hire Robert Pellizzaro, a second year law student. He was engaged primarily on a small project on replevin which later was submitted to the Minister of Justice as an informal Report. The Commission has hired at least one law student every summer since the mid 1970s and we believe that the experience has always been mutually beneficial.

We wish to thank all our staff, past and present, including our Executive Director, Jeffrey Schnoor, Legal Counsel Iris Allen and Marilyn Pilon and our Administrator, Suzanne Pelletier, for their valuable contribution to the work of the Commission.

4. Staff Development Workshop

In last year's Annual Report, we discussed a Staff Development Workshop which, for the first time, brought together lawyers from the various law reform agencies in Canada to compare notes and learn from each other's experiences. The Workshop was extremely productive and is evidence of the increasing professionalism of our Legal Counsel.

Our staff is engaged in organizing the second Staff Development Workshop which will be hosted by the Commission in Winnipeg in May 1991. We look forward to this important educational opportunity for our legal staff.

D. THE COMMISSION'S PROGRAMME

1. Formal Reports

During the past year, the Commission submitted one formal and two informal Reports to the Minister of Justice and Attorney General. In addition, four Discussion Papers were published and circulated among interested persons and organizations in order to seek their views; Reports on these issues will be forthcoming.

#73 - Statutory Designations and the Retirement Plan Beneficiaries Act - October, 1990

This Report deals with an important gap in *The Retirement Plan Beneficiaries Act* which may jeopardize the inheritance of monies held in registered retirement savings plans. Millions of dollars are potentially at stake.

Many Manitobans attempt to name the person who should receive the money in their registered retirement savings plan on their death by completing a "Designation of Beneficiary" form. However, the Commission concluded that these forms are probably ineffective, since they do not comply with the formalities required by *The Wills Act* and are not authorized by any other statute. A decision of the Court of Queen's Bench subsequently came to the same conclusion. As a result, the funds held in the registered retirement savings plans of these individuals may not go to their intended beneficiary on their death.

The Commission proposed that this problem be resolved by amending *The Retirement Plan Beneficiaries Act*. The Commission also proposed a number of miscellaneous amendments to the statute; in particular, it proposed amendments which would protect RRSPs from the claims of creditors, in the same way that pension benefits are protected.

2. Informal Reports

#20A - Limitation of Actions Brought by the Crown - September 27, 1990.

The Crown (the provincial government) presently has a special advantage when it sues someone. Anyone else must begin their lawsuit within a specified time (usually two or six years, depending on the type of lawsuit). If the action is not begun in time, it will be dismissed. However, this rule does not apply to the provincial government. It may wait as long as it wishes to bring a lawsuit and is not bound by any time limits.

In this Report, the Commission argued that this special treatment gives the government an unfair advantage and should not be continued. An amendment to *The Limitation of Actions Act* was proposed which would treat the provincial government like all other litigants.

The informal Report is reproduced in Appendix B.

#20B - Replevin and the Need for Prior Possession - January 28, 1991

This Report considered criticism that the decision of the Manitoba Court of Appeal in *Manitoba Agricultural Credit Corporation* v. *Heaman* (1990), 70 D.L.R. (4th) 518, limited the utility and effectiveness of the remedy of replevin (now known as interim order for the recovery of possession of personal property). The Commission concluded that, in light of the purpose of the remedy and the availability of other remedies, no reform is required.

The informal Report is reproduced in Appendix C.

3. Discussion Papers

Distress in Commercial Tenancies - May, 1990

Every landlord has the right to enter the premises of a commercial tenant (such as a retail store, office or warehouse) to seize and sell the tenant's chattels, if the tenant is in arrears of rent. This self-help remedy, which does not require a court order, is called distress for rent. The remedy has been abolished for residential and farm tenancies.

The remedy of distress is still available for all commercial tenancies and is an important aspect of the landlord/commercial tenant relationship. However, the remedy has come to be criticized on a number of grounds:

(1) Because the law governing it has changed little since the Middle Ages, it is full of anachronistic technicalities and obscure rules. Much of the law of distress is often unnecessarily complicated, if not absurd, in light of modern-day commercial reality.

(2) The fact that a landlord does not require a court's approval to proceed means that there is no prior consideration of the merits of the case. It is argued that the self-help nature of the remedy is contrary to the modern practice of placing an impartial arbiter between the debtor and the creditor. On the other hand, landlords argue that the remedy only works because it is fast and inexpensive.

(3) It has been suggested that there is no inherent reason why landlords should have special powers over the goods of tenants. If any creditor is to have special powers over a debtor's goods, they should be conferred by agreement rather than by operation of law. On the other hand, landlords argue that the consequences of a default are more drastic for them than for other creditors due to difficulties in re-letting and repairing the premises.

The Commission issued the Discussion Paper in order to seek opinions as to whether the law of distress in commercial tenancies should be reformed. The Discussion Paper put forward two possible reforms:

(1) The law could be codified into a single statute in order to make it more accessible. At the same time, the law could be simplified and rationalized in order to reflect modern commercial reality and eliminate the many technicalities which do nothing but hamper the remedy's effectiveness.

(2) The remedy could be abolished entirely. This would eliminate the distinction between landlords and other creditors. If a landlord wanted security for rent, he or she would then have to negotiate with the tenant for an interest in the tenant's property.

Although the deadline for submissions has passed, no further work on the project has been conducted due to higher priority projects. The project will resume in the coming year.

Advance Directives and Durable Powers of Attorney for Health Care - July, 1990

In this Discussion Paper the Commission asks the question: Should individuals be able to give binding directions respecting the medical treatment that they wish or do not wish at some future time when they are unable to express their wishes? At present, such 'living wills' are generally not legally binding in Canada. However, they do have binding effect in most of the United States and Australia.

The Paper examines two mechanisms: the advance directive and the durable power of attorney for health care. The advance directive allows individuals to specify in writing the treatment they do or do not want administered at some future time. The durable power of attorney for health care allows individuals to appoint some other person to make decisions on their behalf at that future time.

This Discussion Paper received a tremendous public reaction. In mid-July, 1990, our Executive Director, Jeffrey Schnoor, was a guest on Questionnaire, CBC Radio's afternoon phone-in programme and, soon after, the CTV National News reported on it. The public reaction which followed was gratifying; we received hundreds of requests for copies of the Discussion Paper. To date, approximately 600 copies have been distributed.

A good number of responses were received and the Commission would like to thank the respondents for their thoughtful consideration of the issues. These submissions have been invaluable to our deliberations.

Additional insight on the issues raised in the Discussion Paper was obtained when Mr. Schnoor and Legal Counsel, Iris Allen, accepted an invitation to speak at Toronto's Baycrest Centre for Geriatric Medicine and the University of Toronto's Centre for Bioethics in February, 1991. We would like to thank Drs. Michel Silberfeld and Peter Singer for their kind invitation. The visit resulted in our gaining important new perspectives on the issues before us.

It is anticipated that the Commission will be submitting its final Report to the Minister within a few months.

Sterilization of Minors and Mentally Incompetent Adults - November 1990

This Discussion Paper raises issues concerning access to non-therapeutic sterilization by people who, due to youth or mental disability, are legally incapable of personally consenting to the procedure. A non-therapeutic sterilization is one performed for social reasons like contraception, rather than for protection of the person's physical or mental health.

The decision of the Supreme Court of Canada in the *Re Eve* case has changed the law in this area. It decided that no person or court can lawfully give consent on behalf of another to a non-therapeutic sterilization. This means that the procedure can never be available to a person who cannot consent personally. The Discussion Paper asks whether provincial legislation is needed to provide a legal mechanism to authorize non-therapeutic sterilizations in some situations.

The Paper was distributed to interested groups and persons to obtain their comments. It is our hope to review the responses received and to submit our final Report to the Minister during the coming year.

Towards a New Manitoba Real Property Act - January, 1991

This Discussion Paper accompanies a Report, entitled *Renovating the Foundations: Proposals for a Model Land Recording and Registration Act*, prepared by a Joint Land Titles Committee made up of nominees of governments and law reform agencies of a number of Canadian jurisdictions (Alberta, ritish Columbia, Manitoba, the Council of Maritime Premiers, Northwest Territories, Ontario, Saskatchewan and the Yukon Territory). The foundation of the Joint Land Titles Act project is original work which was done by Prof. Thomas W. Mapp for the Alberta Law Reform Institute, and the Institute, through Prof. Mapp and W.H. Hurlburt, is responsible for the drafting of the Report. The Report sets forth the core provisions of a Model Land Recording and Registration Act, designed to be capable of enactment in identical, or closely similar terms, in the various provinces and territories. The draft Act is built upon experience under the existing legislation but seeks to make more explicit the underlying principles and structures of the current system as it has developed over time, and to clarify or resolve some matters that are at present unclear or, for various reasons, unsatisfactory.

Because enactment of the Model Act would result in substantial change in the legislative foundation of Manitoba's land titles system, the Commission organized a seminar for the legal profession and were fortunate to have Prof. Mapp and Mr. Hurlburt agree to conduct this seminar. In addition, at our request, Prof. Mapp made himself available to discuss the model statute with the Real Property Subsection of the Manitoba Bar Association.

Work on this project will continue in the coming year.

4. Implementation of Recommendations

Since the Commission's inception in 1970, 73 formal Reports and 34 informal Reports have been submitted to the Minister of Justice and Attorney General. Of these, 81% have been implemented (in full or in part) by legislation or otherwise. Appendix D contains a full list of our Reports, together with details of their implementation

A significant number of our Reports were implemented by legislation last year. However, no further Reports were implemented this year. We expect that this is at least partly attributable to the fact that relatively few of our more recent Reports remain unimplemented. We take this opportunity to highlight a few of these and to urge renewed consideration for their implementation:

- *The Bulk Sale Act* (Report #71, 1988) - This Act imposes expense and delay on business people without achieving its stated purpose of protecting creditors. In an era when economic efficiency and competitiveness is increasingly being emphasized, we think that our recommendation that this ineffective statute be repealed is particularly timely.

- *Administrative Law, Part II: Judicial Review of Administrative Action* (Report #69, 1987) - This Report proposed important improvements to and simplification of the method by which decisions taken by administrative tribunals can be challenged. At the time of its release, the Report received widespread support from the legal profession and the judiciary.

- *Periodic Payment of Damages* (Report #68, 1987) - This Report proposed that the courts be allowed the discretion to award damages in the form of

periodic payments, rather than in the form of a lump sum. Granting such a discretion will, in many cases, result in more just decisions and in cost savings to society.

5. Work in Progress

The following topics are currently under study:

1. Justices of the Peace and Magistrates

This project deals with the independence and impartiality of Manitoba's justices of the peace and magistrates. It is a follow-up to our recent work respecting Manitoba's provincial judges.

As indicated in our last Annual Report, a survey was conducted of the activities of justices of the peace and magistrates in Manitoba. The analysis of the data resulted in some delay in preparing our final recommendations. However, this is now complete and we hope to submit our final Report to the Minister in late summer or early fall.

2. Living Wills (Advance Directives and Durable Powers of Attorney for Health Care)

As noted above, this project is nearing completion and we hope to submit our final Report to the Minister within the next few months.

3. *The Trustee Act* and the Law of Trusts

As noted above, the research for this project is being funded by the Manitoba Law Foundation. The Commission has two papers underway relating to trusts: non-charitable purpose trusts and ethical investments. We have been greatly assisted on this project by Dr. Donovan D.M. Waters of the Faculty of Law, University of Victoria, noted author and academic on the Law of Trusts.

4. Professional Associations and Occupations

On November 8, 1990, the Hon. James C. McCrae, Minister of Justice and Attorney General, requested that the Commission consider the issue of professional and occupational associations and the role and responsibility of the provincial government regarding the governing of such associations and occupations. The terms of reference of the project are extensive:

- the effectiveness of the present system within Manitoba for the governing of professional and occupational associations, with reference to the policies and practices of the other Canadian provinces;

- the extent to which the Provincial Government should delegate governing authority to the professional and occupational associations, including the criteria by which self-governing status should be conferred on professions and occupations;

- the necessity of a structure within government to deal with issues pertaining to the governing of professional associations and the nature of that structure;

- the advisability of enacting general legislation regarding the governing of all occupational and professional associations and the proposed provisions of any legislation recommended;

- the advisability of permitting incorporation of professionals; and

- any other matter which would assist the government in determining an effective policy for the governing of professional and occupational associations.

The project is now well underway and we hope to publish a Discussion Paper during the coming year.

5. Animals

As noted above, the research for this project is currently being funded by the Manitoba Law Foundation. The project aims to identify gaps and flaws in the law respecting the protection and control of animals. We expect to complete the project within the next year and a half.

6. Land Titles Registration System

As noted above, a Discussion Paper was issued in January 1991. Although the Commission felt that the enactment of a new Act would clarify and improve the law of Manitoba and offer the further advantage of greater uniformity of law and practice in Canadian jurisdictions if it were widely adopted, we did not want to proceed without consultation with the practising Bar and other interested organizations and individuals. We, therefore, issued the Discussion Paper and, in early March, invited Mr. William H. Hurlburt, Prof. Thomas Mapp and Prof. D. Trevor Anderson (our representative on the Joint Committee) to a meeting with members of the Bar and other interested parties; Professors Mapp and Anderson also participated in a meeting with members of the Real Property Subsection of the Manitoba Bar Association.

It is hoped that the Joint Committee will be re-established to consider the responses received and an attempt made at reaching as much uniformity as possible between the various jurisdictions. It may, therefore, be some time before a final Report can be submitted to the Minister on this very important issue.

7. Sterilization of Minors and Mentally Incompetent Adults

As noted earlier, a Discussion Paper was issued in November 1990. We have received several responses of a very high quality which demonstrated a profound sensitivity to the difficult issues raised. It is hoped that a Report can be submitted to the Minister in the not too distant future, staff resources permitting.

8. Non-Residential Tenancies (Parts I, II and III of *The Landlord and Tenant Act*)

Research on this project has been deferred due to higher priority issues. It is anticipated that work will resume within the next few months. This project will include a review of the responses received to our Discussion Paper on distress for rent in commercial tenancies.

We expect that a number of other projects will be added to our agenda in the coming year.

E. PUBLIC RELATIONS

An important priority of the Commission continues to be efforts to increase public awareness of our work. The activities relating to specific projects are set out earlier in this Report. The following is a list of some of the other events in which various members of the Commission and its staff participated over the last year:

- As in past years, a column about our activities appeared intermittently in *Headnotes and Footnotes*, the publication of the Manitoba Bar Association. With the co-operation of The Law Society of Manitoba, we also continued to distribute to the legal profession executive summaries of some of our Discussion Papers and Reports.

- The Commission's President, Prof. Edwards, attended the Triennial Commonwealth Law Conference in Auckland, New Zealand, as a representative of the Commission and of the Faculty of Law, University of Manitoba. He presented a paper on law reform to the meeting of Commonwealth Law Reform Agencies which was held during the Conference.

- Mr. Schnoor accepted an invitation from the Community Legal Education Association to speak on the work of the Commission to a seminar for high school teachers.

- We were honoured to receive a visit from Ms Lydia Elliott, Director of Legal Drafting for the Government of St. Lucia.

- Prof. Edwards and Mr. Schnoor attended the Annual Meeting of the Law Reform Conference of Canada held in Saint John, New Brunswick in August 1989.

- Prof. Edwards and Mr. Schnoor also attended the Uniform Law Conference in Saint John, New Brunswick.

- Prof. Edwards and Mr. Schnoor accepted an invitation from the Alberta Provincial Judges Association to attend their annual meeting, and to speak to them on issues arising from the Commission's 1989 Report on *The Independence of Provincial Judges*. In particular, they were interested in aspects of the Commission's recommendations on appointment and evaluation of provincial judges.

- Mr. Schnoor attended the Conference on Health Care Ethics and Law, sponsored by the Canadian Institute for the Advancement of Justice, in Toronto, Ontario. Important insights into current and future projects were obtained.

- Mr. Schnoor attended a conference in Victoria, British Columbia, dealing with the regulation of professions.

F. ACKNOWLEDGMENTS

It is traditional for us to take this opportunity to thank all those who have assisted in the work of the Manitoba Law Reform Commission during the past year. Although the result is sometimes repetition from one Annual Report to the next, this should not be taken as diminishing in any way our profound appreciation.

Our thanks go to Dean Roland Penner, Q.C., and the Faculty of Law of the University of Manitoba, as well as the staff of the E.K. Williams Library, the Attorney General's Legal Library Resources, the Great Library and the Provincial Archives and Legislative Library.

We also take this opportunity to express publicly our appreciation to the Minister of Justice and Attorney General of Manitoba, the Honourable James C. McCrae. His support of the Commission has been manifested by his referring important new projects to us, his efforts to implement our recommendations and his willingness to make himself available to us. Appreciation also goes to the Deputy Minister of Justice and Attorney General, Graeme Garson, Q.C.

This is a Report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, made as of the 31st day of March, 1991.

Clifford H.C. Edwards, President

John C. Irvine, Commissioner

Gerald O. Jewers, Commissioner

Eleanor R. Dawson, Commissioner

Pearl K. McGonigal, Commissioner

APPENDIX A

THE LAW REFORM COMMISSION ACT
C.C.S.M. c. L95

CHAPTER L95

THE LAW REFORM COMMISSION ACT

(Assented to March 8, 1990)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definition
1 In this Act,

"commission" means the Manitoba Law Reform Commission continued under this Act; («Commission»)

"minister" means the Attorney General. («ministre»)

Continuation of commission
2(1) The "Manitoba Law Reform Commission", comprising the members appointed under section 3, is continued as a body corporate.

Winding up
2(2) In no case shall the affairs or the duties of the commission be wound up or altered unless the Legislature so provides.

Appointments to commission
3(1) The commission shall be composed of not less than five and not more than seven commissioners appointed by the Lieutenant Governor in Council on the recommendation of the minister,

CHAPITRE L95

LOI SUR LA COMMISSION DE RÉFORME DU DROIT

(Sanctionnée le 8 mars 1990)

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions
1 Les définitions qui suivent s'appliquent à la présente loi.

«Commission» La Commission de réforme du droit du Manitoba prorogée en vertu de la présente loi. ("commission")

«ministre» Le procureur général. ("minister")

Prorogation de la Commission
2(1) Est prorogée à titre de personne morale la Commission de réforme du droit du Manitoba, composée des membres nommés en vertu de l'article 3.

Cessation des fonctions
2(2) Sauf si l'Assemblée législative le prévoit, ni les activités ni les fonctions de la Commission ne peuvent cesser ni être modifiées.

Nomination à la Commission
3(1) La Commission est composée de cinq à sept commissaires nommés par le lieutenant-gouverneur en conseil sur la recommandation du ministre dont :

(a) at least one of whom shall be a judge of the Court of Queen's Bench;

(b) at least one of whom shall be a full-time member of the Faculty of Law of the University of Manitoba;

(c) at least one of whom shall be a barrister and solicitor entitled to practise in the province, and who is not in the full-time employ of the Government of Manitoba or any agency thereof; and

(d) at least one of whom is not a lawyer.

Terms of office
3(2) Subject to subsection (3), each commissioner shall hold office for a term of three years during good behaviour.

Terms of first commissioners
3(3) Two of the first commissioners appointed by the Lieutenant Governor in Council shall be appointed for a term of one year during good behaviour, a further two of the first commissioners shall be appointed to hold office for a term of two years during good behaviour, and the rest of the first commissioners so appointed shall be appointed to hold office for a term of three years during good behaviour.

Disqualification of commissioner
3(4) A commissioner is disqualified from holding office, and the office held by the commissioner is vacated, where the commissioner

(a) fails to attend three consecutive regular meetings of the commission, except where the commission by resolution excuses the absences; or

(b) in the case of a commissioner who is a barrister or solicitor, ceases to be a member in good standing of the Law Society of Manitoba; or

(c) is declared under The Mental Health Act to be mentally disordered or incapable of managing his or her affairs.

Vacancies
3(5) A vacancy among the commissioners resulting from resignation, disqualification or death before the expiry of a term of office shall be filled by an appointment for the remainder of the unexpired term.

a) au moins un juge de la Cour du Banc de la Reine;

b) au moins un membre à plein temps de la Faculté de droit de l'Université du Manitoba;

c) au moins un avocat ayant le droit de pratiquer dans la province mais ne travaillant pas à temps plein pour le gouvernement du Manitoba ou un de ses organismes;

d) au moins une personne qui n'est pas avocate.

Mandat
3(2) Sous réserve du paragraphe (3), chaque commissaire occupe son poste à titre inamovible pour trois ans.

Mandat des premiers commissaires
3(3) Parmi les premiers commissaires nommés par le lieutenant-gouverneur en conseil, deux sont nommés à titre inamovible pour des mandats d'un an, deux autres sont nommés à titre inamovible pour des mandats de deux ans et les autres commissaires sont nommés à titre inamovible pour des mandats de trois ans.

Déchéance
3(4) Est déchu de son poste le commissaire qui :

a) omet d'être présent à trois réunions consécutives régulières de la Commission, à moins que celle-ci n'excuse, par résolution, les absences;

b) étant avocat, cesse d'être un membre en règle de l'Association du Barreau du Manitoba;

c) est déclaré atteint de troubles mentaux ou incapable de gérer ses biens en vertu de la Loi sur la santé mentale.

Sur ce, le poste de ce commissaire devient vacant.

Vacances
3(5) Toute vacance qui se produit parmi les commissaires par suite d'une démission, d'une déchéance ou d'un décès avant l'expiration d'un mandat est remplie pour le reste du mandat non écoulé.

Re-appointment
3(6) A commissioner whose term of office has expired may be re-appointed.

Appointment of successors
3(7) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Transitional
3(8) Notwithstanding anything in this section, the persons who are members of the commission on the coming into force of this Act shall continue to hold office for the terms of their appointments and thereafter until re-appointed or replaced.

President
4 The Lieutenant Governor in Council shall appoint one of the members of the commission, who shall be a lawyer, as president of the commission.

Remuneration
5(1) The president and other members of the commission shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council.

Expenses
5(2) The president and other members of the commission may be paid such reasonable out-of-pocket expenses incurred by them in the performance of duties under this Act as may be approved by the commission.

Reduction of remuneration
5(3) In no case shall the remuneration paid to the members of the commission be reduced unless the Legislature so provides.

Duties of the commission
6 The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing,

(a) the removal of provisions of the law that are outdated or inconsistent;

(b) the maintenance and improvement of the administration of justice;

(c) the review of judicial and quasi-judicial procedures under any Act;

Nouveau mandat
3(6) Les commissaires peuvent recevoir un nouveau mandat.

Nomination de successeurs
3(7) Le commissaire dont le mandat se termine demeure en poste jusqu'à la nomination de son successeur.

Disposition transitoire
3(8) Malgré les autres dispositions du présent article, les personnes qui sont membres de la Commission au moment de l'entrée en vigueur de la présente loi demeurent en poste pour la durée de leur mandat et par la suite jusqu'à ce qu'ils reçoivent un nouveau mandat ou soient remplacés.

Président
4 Le lieutenant-gouverneur en conseil nomme un des membres de la Commission à titre de président. Celui-ci doit être avocat.

Rémunération
5(1) Le président et les autres commissaires reçoivent la rémunération fixée par le lieutenant-gouverneur en conseil.

Frais
5(2) Le président et les autres commissaires sont indemnisés des frais raisonnables engagés dans l'exercice des fonctions qui leur sont confiées en application de la présente loi, sous réserve de l'approbation de la Commission.

Réduction de rémunération
5(3) Sauf si l'Assemblée législative le prévoit, la rémunération versée aux membres de la Commission ne peut être réduite.

Fonctions de la Commission
6 La Commission a pour fonctions de faire enquête sur les questions se rapportant au droit manitobain et de les étudier en vue de faire des recommandations pour améliorer, moderniser et réformer le droit, et notamment en vue :

a) de supprimer les dispositions du droit qui sont désuètes ou incompatibles;

b) de soutenir et d'améliorer l'administration de la justice;

c) d'examiner les procédures judiciaires et quasi-judiciaires prévues par une loi quelconque;

(d) the development of new approaches to, and new concepts of, law in keeping with and responsive to the changing needs of society and of individual members of society; and

(e) any subject referred to it by the minister.

General powers
7(1) For the purpose of managing and administering the affairs of the commission, the commissioners have, and may on behalf of the commission exercise, all the powers of the commission.

Powers of the commission
7(2) In the performance of its duties, the commission may

(a) institute and direct research, as it considers necessary, including studies and research relating to the laws and legal systems and institutions of other jurisdictions in Canada or elsewhere;

(b) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person;

(c) undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such contractual or other arrangements as it considers necessary to carry out a joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body;

and may do such other things and take such other measures as the commission considers advisable for the achievement of its objects.

Priority studies
7(3) The minister may direct that the commission include any project in its program for studies and may direct that special priority be given to any project, and the commission shall be governed by any direction so made.

By-laws
8 The commission may, by by-law, regulate its proceedings and provide generally for the conduct and management of its affairs.

d) d'élaborer de nouvelles méthodes et de nouveaux concepts de droit correspondant à l'évolution des besoins de la société et des individus qui la composent;

e) de traiter tout autre sujet que le ministre lui soumet.

Pouvoirs généraux
7(1) Aux fins de la gestion des affaires internes de la Commission, les commissaires sont investis de tous les pouvoirs de celle-ci, et ils peuvent exercer ces pouvoirs en son nom.

Pouvoirs de la Commission
7(2) La Commission peut, dans l'exercice de ses fonctions :

a) entreprendre et diriger les recherches qu'elle juge nécessaires, notamment des études et des recherches relatives au droit, aux systèmes et aux institutions juridiques d'autres autorités législatives au Canada ou ailleurs;

b) recevoir et examiner toutes propositions de réforme du droit qui lui sont formulées ou transmises par un organisme ou une personne;

c) faire toute étude que ses fonctions lui permettent, à titre de projet conjoint de la Commission et d'une ou de plusieurs autres commissions, ou d'un ou de plusieurs autres organismes de réforme du droit au Canada ou ailleurs, et elle peut conclure les contrats ou les autres arrangements qu'elle juge nécessaires à la réalisation du projet conjoint, notamment des arrangements visant à fournir à une telle commission ou à un tel organisme du personnel ou d'autres moyens dont dispose la Commission.

Elle peut également accomplir tout autre acte et prendre toute autre mesure qu'elle juge indiqués pour la réalisation des ses objets.

Priorité des études
7(3) Le ministre peut ordonner à la Commission d'inclure un projet dans son programme d'études et lui ordonner d'accorder une priorité spéciale à un projet; la Commission doit respecter l'ordre qui lui a été donné.

Règlements administratifs
8 La Commission peut, par règlement administratif, régir sa procédure et prévoir de façon générale la conduite et la gestion de ses affaires internes.

Meetings
9(1) The commission shall meet at least four times in each year.

Quorum
9(2) A majority of the commission shall constitute a quorum of the commission.

Employment of staff
10(1) An executive director, and such lawyers, office staff and other employees as may be required for the commission's purposes, may be employed under The Civil Service Act.

Civil Service Acts apply
10(2) The provisions of The Civil Service Act and The Civil Service Superannuation Act, and the regulations made under those Acts, apply to persons employed under subsection (1).

Remuneration and duties of employees
11(1) The commission shall pay the salaries and remuneration of persons employed or appointed under section 10, and the commission shall prescribe their duties.

Duties of executive director
11(2) The executive director has the management, direction, control and administration of the day to day operations of the commission.

Temporary assistance
12 The commission may engage on a temporary basis or for specific projects the services of persons having technical or specialized knowledge of any matter relating to the work of the commission, to advise and assist the commission in the performance of its duties under this Act, and may fix and pay the remuneration and expenses of such persons.

Application of Civil Service Act
13(1) Notwithstanding subsection 14(3), for the purpose of appiying subsection 12(4) of The Civil Service Act to persons employed under section 10, the funds of the commission shall be deemed to be part of the Consolidated Fund.

Agency of government
13(2) The commission is an agent of Her Majesty in right of Manitoba.

Réunions
9(1) La Commission tient un minimum de quatre réunions par an.

Quorum
9(2) Le quorum est constitué par la majorité des commissaires.

Personnel
10(1) Un directeur général, ainsi que les avocats, le personnel de bureau et les autres employés dont la Commission a besoin à ses fins peuvent être nommés conformément à la Loi sur la fonction publique.

Application de certaines dispositions
10(2) Les dispositions de la Loi sur la fonction publique et de la Loi sur la pension de la fonction publique ainsi que leurs règlements d'application visent les personnes nommées en vertu du paragraphe (1).

Rémunération et fonctions des employés
11(1) La Commission paie la rémunération des personnes nommées en vertu de l'article 10 et définit leurs fonctions.

Fonctions du directeur général
11(2) Le directeur général assure la gestion de la Commission.

Aide temporaire
12 La Commission peut retenir, de façon provisoire ou pour des projets déterminés, les services de personnes possédant des connaissances techniques ou spécialisées sur toute question relative à ses travaux, pour la conseiller et l'aider à remplir les fonctions que lui attribue la présente loi. Elle peut fixer et payer la rémunération et les frais de ces personnes.

Loi sur la fonction publique
13(1) Malgré le paragraphe 14(3), aux fins de l'application du paragraphe 12(4) de la Loi sur la fonction publique aux personnes employées en vertu de l'article 10, les fonds de la Commission sont réputés faire partie du Trésor.

Mandataire du gouvernement
13(2) La Commission est un mandataire de Sa Majesté du chef du Manitoba.

Funds of commission
14(1) The funds of the commission consist of moneys received from any source including, without restricting the generality of the foregoing, moneys granted to it for its use by the Legislature of Manitoba or the Manitoba Law Foundation.

Payment from Consolidated Fund
14(2) For the purposes of subsection (1), the Minister of Finance, on the requisition of the minister, may pay grants to the commission from and out of the Consolidated Fund with moneys authorized for the purpose by the Legislature.

Use of funds
14(3) The commission has charge, control and management of its funds, and may disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and with this Act, as it may consider proper.

Investment
14(4) Without restricting the generality of subsection (3), the commission may invest any moneys not immediately required for its purposes in investments authorized by the Minister of Finance.

Annual report to minister
15(1) The commission shall report from time to time to the minister and shall make an annual report to the minister on the activities of the commission.

Special report to minister
15(2) When the commission reviews, considers or inquires into any matter referred to it by the minister, the commission shall make a report to the minister with respect to that matter at the conclusion of its deliberations.

Publication of reports
15(3) The commission may publish any report made under this section.

Application of Corporations Act
16 The Corporations Act does not apply to the commission.

Repeal
17 The Law Reform Commission Act, chapter L95 of the Re-enacted Statutes of Manitoba, 1987, is repealed.

Fonds de la Commission
14(1) Les fonds de la Commission sont composés des sommes reçues de toute source, y compris les sommes que l'Assemblée législative du Manitoba ou la Fondation du droit du Manitoba lui accorde.

Paiement sur le Trésor
14(2) Pour l'application du paragraphe (1), le ministre des Finances peut, à la demande du ministre, verser des subventions à la Commission sur le Trésor au moyen des sommes que l'Assemblée législative vote à cette fin.

Utilisation des fonds
14(3) La Commission a la charge, le contrôle et la gestion de ses fonds et elle peut les dépenser ou en disposer autrement de la façon, compatible avec ses objets et la présente loi, qu'elle estime indiquée.

Placements
14(4) Sans préjudice de la portée générale du paragraphe (3), la Commission peut employer les sommes dont elle n'a pas immédiatement besoin dans les placements autorisés par le ministre des Finances.

Rapport annuel
15(1) La Commission présente à l'occasion un rapport au ministre et elle lui présente en outre un rapport annuel sur ses activités.

Rapport spécial
15(2) La Commission présente au ministre un rapport sur toute question que le ministre lui soumet, après la fin de ses délibérations sur cette question.

Publication des rapports
15(3) La Commission peut publier tout rapport qu'elle présente en vertu du présent article.

Loi sur les corporations
16 La Loi sur les corporations ne s'applique pas à la Commission.

Abrogation
17 La Loi sur la Commission de réforme du droit, chapitre L95 des Lois réadoptées du Manitoba de 1987, est abrogée.

Reference in C.C.S.M.

18 This Act may be referred to as chapter L95 of the Continuing Consolidation of the Statutes of Manitoba.

Coming into force

19 This Act comes into force on royal assent.

Codification permanente

18 La présente loi est le chapitre L95 de la Codification permanente des lois du Manitoba.

Entrée en vigueur

19 La présente loi entre en vigueur le jour de sa sanction.

APPENDIX B

INFORMAL REPORT ON
LIMITATION OF ACTIONS BROUGHT BY THE CROWN (#20A)

Manitoba

Law Reform Commission

Commission de réforme du droit

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

(204) 945-2896

September 27, 1990

Hon. James C. McCrae
Minister of Justice and
Attorney General of Manitoba
104 Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Attorney:

Re: Limitation of Actions brought by the Crown

When the Crown is a plaintiff in civil proceedings, it is not bound by *The Limitation of Actions Act*[1] of this province. In contrast to all other plaintiffs, therefore, the Crown can bring suits governed by this Act whenever it pleases, no matter how long the passage of time since the cause of action arose.[2] Another consequence of this state of the law is that the Crown can never have its suit defeated for want of prosecution, since it could simply reinstitute proceedings.[3]

However, when the Crown is a defendant in civil proceedings, it is entitled to rely in its defence on *The Limitations of Actions Act* (or on any other relevant limitation period found in another statute). If the plaintiff has not complied with the limitation period, the Crown has a full defence, as would any other defendant.

Crown immunity from limitation periods is said to have originated as a common law Crown prerogative summarized in the maxim *"nullum tempus occurrit regi"* (time does not run against the King).

Another possible source is the more general common law presumption that the Crown is not bound by statute except by express words or necessary implication. This presumption operates only where the statute would work to the prejudice of the Crown; it does not operate where the statute would confer a benefit.[4] Manitoba, like many provinces, has statutorily enshrined this presumption in section 14 of *The Interpretation Act*,[5] which provides:

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[1]*The Limitation of Actions Act*, C.C.S.M., c.L150.

[2]See, e.g.: *Alberta* v. *Buys* (1989), 59 D.L.R. (4th) 677 (Alta. C.A.) and *A.G. Ont.* v. *Watkins* (1975), 58 D.L.R. (3d) 481 (Ont. C.A.).

[3]*Alberta Government Telephones* v. *Arrow Excavators and Trenchers (1972) Ltd.* (1989), 69 Alta. L.R. (2d) 332 (C.A.).

[4]See: P.W. Hogg, *Liability of the Crown* (2nd ed., 1989) 43 and 201.

[5]*The Interpretation Act*, C.C.S.M., c. I80. The law is uncertain whether wording like Manitoba's represents a complete codification of the common law presumption (thus replacing the common law) or whether it is only a partial codification because the concept of binding the Crown "by necessary implication" is omitted from the statute. If the latter is so, then the common law presumption would remain (to that extent) in effect.

The ability of the Crown to rely nevertheless on a defence created by the same statute that does not bind it, is statutorily enshrined in section 17 of *The Proceedings Against the Crown Act*, which provides:

> No enactment is binding on Her Majesty or affects Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

While some perceive the prerogative to be merely a specific application of the more general presumption,[6] the Alberta Court of Appeal has recently held that the prerogative right is separate and distinct from the presumption.[7]

In any event, both the presumption and the prerogative (if separate) could easily be overcome by the simple action of expressly binding the Crown in *The Limitation of Actions Act.*

What policy reasons justify the maintenance of Crown immunity to limitation periods? The chief policy argument appears to be ". . . that the Crown must first be concerned with the affairs of state and is not always able to concern itself with the protection of its rights. The public rights ought not to be subject to erosion by negligence or ill intentions of public servants."[8]

There are two main objections that deny the continued relevance of this policy rationale. The first objection is that it is, quite simply, anachronistic:

> The doctrine of Crown immunity developed in an age markedly different from our own -- an age when the scope of Crown activity was limited and notions of governmental accountability and responsibility had not developed to their present stage.[9]

Its ongoing presence in an age of "big government", and in an age increasingly concerned with equality of treatment, fuels the intensity of the second objection. Crown immunity to limitation periods, no matter what the justification, is (as bluntly stated by the Ontario Law Reform Commission) "patently unfair to defendants."[10] The ever-expanding role of government in society means more people than ever before are being engaged in litigation where the Crown can potentially use this special privilege that demonstrates its status of being "above the law".

Apart from being anachronistic and unfair to defendants, this inequality of status between the Crown and the governed may possibly be contrary to the section 15 equality provision of the *Charter.*[11]

Law Reform Commissions across Canada have repeatedly recommended or endorsed the removal of this Crown prerogative. Such recommendations have been made by the

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> This Act does not prejudice the right of the Crown to take advantage of the provisions of any Act of the Legislature; and, in proceedings against the Crown, any Act of the Legislature that could, if the proceedings were between persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

[6]P.W. Hogg, *Liability of the Crown* (2nd ed., 1989) 42, citing *A.-G.* v. *Donaldson* (1842) 10 M. & W. 117, 123-124; 152 E.R. 406, 408-409 (Exch.).

[7]*Alberta* v. *Buys* (1989), 59 D.L.R. (4th) 677 at 688 (Alta. C.A.).

[8]*Alberta* v. *Buys* (1989), 59 D.L.R. (4th) 677 at 688 (Alta. C.A.).

[9]Law Reform Commission of British Columbia, *Report on Civil Rights. Part I: Legal Position of the Crown* (Report #9, 1972) 5.

[10]Ontario Law Reform Commission, *Report on Limitation of Actions* (1969) 137.

[11]However, the strength of this possibility has been weakened by the Supreme Court of Canada's recent trilogy of cases dealing with section 15: *Andrews* v. *Law Society of British Columbia* (1989) 56 D.L.R. (4th) 1 (S.C.C.); *Reference re: Workers' Compensation Act, 1983 (Nfld.), ss. 32, 34* (1989), 56 D.L.R. (4th) 765 (S.C.C.); *R.* v. *Turpin* (1989), 48 C.C.C. (3d) 8 (S.C.C.). The trilogy limits the meaning of discrimination to the enumerated grounds in section 15 and to "analogous grounds" involving discrimination against homogeneous groups suffering social, political and legal disadvantage in our society. This narrower view of discrimination may preclude a successful challenge based on simple inequality of access to the courts.

Commissions in British Columbia, Alberta, Saskatchewan, Ontario and Newfoundland.[12] Four provinces have, in fact, bound the Crown to their respective statutes of limitation: British Columbia, Saskatchewan, New Brunswick and Prince Edward Island.[13]

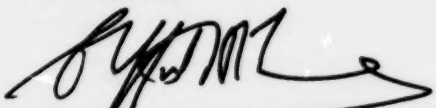
Based on the foregoing, the Commission recommends:

> ***That The Limitation of Actions Act, C.C.S.M. c. L150 be amended to provide expressly that the Crown is bound by that Act.***

One or two minor consequential amendments may also be required as a result of our recommendation. We would be pleased to assist Legislative Counsel in this regard.

This is informal report #20A pursuant to section 15(2) of *The Law Reform Commission Act.*

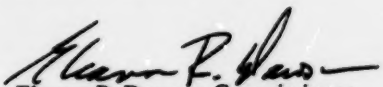
Yours sincerely



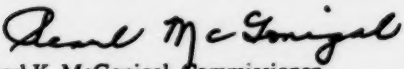
Clifford H.C. Edwards, President

John C. Irvine, Commissioner

Gerald O. Jewers, Commissioner



Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

[12]Ontario Law Reform Commission, *Report on Limitation of Actions* (1969); Ontario Law Reform Commission, *Report on the Liability of the Crown* (1989); Newfoundland Law Reform Commission, *Report on Limitation of Actions* (Report #1, 1986); Law Reform Commission of Saskatchewan, *Proposals for a New Limitation of Actions Act* (1989); Alberta Law Reform Institute, *Limitations* (Report #55, 1989); Law Reform Commission of British Columbia, *Report on Civil Rights. Part I: Legal Position of the Crown* (Report #9, 1972) and *Report on Limitations* (Report #15, 1974).

[13]*Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14(1); *Limitation of Actions Act*, R.S.S. 1978, c. L-15, s. 2(a); *Limitation of Actions Act*, R.S.N.B. 1973, c. L-8, s. 1; *Interpretation Act*, R.S.P.E.I. 1988, c. I-8, s. 14; *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7, s. 1(a). Ontario binds the Crown only to certain parts of its *Limitations Act* (those limitation periods concerning rights of entry, distress or action having to do with land, except for waste or vacant Crown land): *Limitations Act*, R.S.O. 1980, c. 240, ss. 3, 16, 41.

APPENDIX C

INFORMAL REPORT ON
REPLEVIN AND THE NEED FOR PRIOR POSSESSION (#20B)

Manitoba

Law Reform Commission

Commission de réforme du droit

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

(204) 945-2896

January 28, 1991

Hon. James C. McCrae
Minister of Justice and
Attorney General of Manitoba
104 Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Attorney:

Re: Replevin and the Need for Prior Possession

A. Introduction

This Report concerns the availability in Manitoba of an ancient institution, the interlocutory remedy nowadays known as an "interim order for the recovery of possession of personal property". This remedy was formerly known, both in the common law and in various statutes, by its ancient name of replevin, and that name, for the sake of brevity, will be used throughout this Report. While some examination of the history of this remedy, and a review of its essential nature, must presently be attempted, the focus of this Report will be a very specific one, dealing with a single aspect of the remedy. The issue in question is that which lay at the heart of the Manitoba Court of Appeal's recent decision in *Manitoba Agricultural Credit Corporation* v. *Heaman*,[1] which declared that, in order to obtain replevin, the applicant must be able to prove his or her own previous possession of the chattel in question. That proposition moved one of the counsel involved in that case to write to the Commission, criticizing the present state of the law for restricting the scope of the remedy in general and its utility to creditors in particular and referring the matter for our consideration.

Before we attempt a brief overview of the *Heaman* decision itself, it will be convenient to remind ourselves of the essential function of replevin and its modern equivalent. For present purposes, it is sufficient to note that replevin consists of an order of the Court directed to the sheriff to cause someone currently in possession of a chattel (the respondent or replevisee) to deliver up to another person (the applicant or replevisor) interim possession of that chattel, pending the outcome of litigation to determine the final possessory rights of the competing parties. This proceeding, then, does not determine the final rights of the parties. It is quite possible that an applicant may successfully seek interim recovery of a chattel, but then lose at trial, and so be compelled to return the chattel to the respondent.

Since an applicant for replevin is required only to show a *prima facie* claim to it, the availability of replevin has since the earliest times been attended by safeguards. For example,

[1] *Manitoba Agricultural Credit Corp.* v. *Heaman* (1990), 70 D.L.R. (4th) 518 (Man. C.A.).

the court may require the applicant to pay into court as security twice the value of the property in question.[2] Presently, in Manitoba, those safeguards are to be found in section 59 of *The Court of Queen's Bench Act* and Rule 44 of the *Queen's Bench Rules*, the crucial passages of which are set out below:

> 59(1) Where, in an action in which the recovery of possession of personal property is claimed, it is alleged that the property,
>
> (a) was unlawfully taken from the plaintiff; or
>
> (b) is unlawfully detained by the defendant,
>
> the court may, on motion, make an interim order for recovery of possession of the property.[3]
>
> 44.01(1) An interim order under section 59 of The Court of Queen's Bench Act for recovery of possession of personal property may be obtained on motion by the plaintiff, supported by an affidavit setting out,
>
> (a) a description of the property sufficient to make it readily identifiable;
>
> (b) the value of the property;
>
> (c) that the plaintiff is the owner or lawfully entitled to possession of the property;
>
> (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant; and
>
> (e) the facts and circumstances giving rise to the unlawful taking or detention.[4]

B. The *Heaman* case

The case of *Manitoba Agricultural Credit Corporation* v. *Heaman* amply illustrates the perceived problem. Mr. Heaman, a farmer, borrowed money from the plaintiff corporation, giving the lender a chattel mortgage on some cows which were in his possession. He defaulted on the loan and the lender sought to seize the cows. However, for reasons not disclosed in the judgment, the lender did not itself try to seize the cows directly (as it was entitled to do under the security agreement) but, instead, applied for an interim order for the recovery of the cows, under section 59 of *The Court of Queen's Bench Act* and *Queen's Bench Rule* 44.

The order was granted by the Motions Court judge, authorizing the sheriff to enter upon the respondent's lands to seize the cows and deliver them to the applicant. Heaman appealed to the Court of Appeal, which considered the wording of the statute and overturned the order, on the ground that such an order was only available where the applicant could point to his own prior possession of the chattel in question, before the alleged wrong took place.

The Court reviewed the history of replevin in Manitoba. By the time Manitoba became a province, replevin had long since expanded beyond its original functions as a tenant's remedy for wrongful distress,[5] and was being used at common law to redress all situations of allegedly

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[2]*Queen's Bench Rules*, Rule 44.03.

[3]*The Court of Queen's Bench Act*, C.C.S.M. c. C280, s. 59(1).

[4]*Queen's Bench Rules*, R. 44.01(1).

[5]At common law, a landlord can distrain a tenant's chattels for non-payment of rent. By statute, the remedy has been abolished in respect of residential and agricultural tenancies, but is still available to commercial landlords. See, in general, Manitoba Law Reform Commission, *Discussion Paper on Distress in Commercial Tenancies* (1990).

wrongful dispossession.[6] The common law of replevin, however, was displaced as early as 1875 by the first of a series of codifying statutes which have since governed this topic of Manitoba law. At first, it formed part of a general enactment dealing with the administration of justice.[7] Subsequently, it was given a statute of its own,[8] and still later was subsumed into the rules of court.[9] In 1936, it was again allotted to a separate statute,[10] which was from time to time revised. In 1989, *The Replevin Act* was repealed and the remedy incorporated in *The Court of Queen's Bench Act* and *Queen's Bench Rules*.[11]

Following this review, the Court concluded that neither the current statute, nor any of its predecessors, had changed the old common law of replevin so as to cover situations where there was no prior possession.[12] Reviewing the history of the remedy, the Court noted particularly that the governing statute referred to "an interim order for the recovery of possession of personal property", and expressed the view - fortified by the perusal of several authoritative dictionaries[13] - that:

> The use of the word "recovery", then as now, denotes a legislative intent that the remedy should only be available to enable a person to get back what he had lost: possession of the chattels.[14]

In other words, as Mr. Justice Twaddle noted somewhat later in his judgment, "[i]t . . . is not available to obtain delivery up of goods not previously possessed."[15] Just as with the order of

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[6]J.G. Fleming, *The Law of Torts* (7th ed. 1987) 68.

[7]*An Act Respecting the Administration of Justice*, S.M. 38 Vict., c. 5, ss. 1-10 (1875).

[8]*The Replevin Act*, R.S.M. 1892, c. 136.

[9]*The Queen's Bench Act, 1895*, S.M. 1895, c. 6, rules 854-869.

[10]*The Replevin Act*, S.M. 1936, c. 36.

[11]*The Court of Queen's Bench Act*, S.M. 1988-89, c. 4, s. 59; *Queen's Bench Rules*, R. 44.

[12]We note that the Saskatchewan Court of Appeal came to the opposite conclusion in *Agricultural Development Corp. of Sask.* v. *Vigro Seed and Supply Ltd.* (1989), 64 D.L.R. (4th) 385 at 392-393 (Sask. C.A.). In the words of Bayda C.J.S., there is

> . . . little doubt that at common law replevin was available in only those cases where the claimant originally had possession . . . .
>
> In Saskatchewan, the common law rules governing replevin have been codified in the Queen's Bench Rules of Court. . . . Whether original possession of the property by a claimant for a writ of replevin is a necessary ingredient is now largely a matter of interpretation of the Rules of Court. While it may still have a role to play, . . . the common law, as once interpreted, must now yield to the Rules as interpreted by applying conventional rules of construction.
>
> In the case of an unlawful detention (as opposed to unlawful taking) there is not the slightest suggestion in a plain reading of Rules 406 and 407 that original possession in the claimant in [sic] a necessary prerequisite . . . . Nowhere do these rules require, either expressly or implicitly, an allegation that the plaintiff was at one time in possession of the property.

The same position was taken in E.A. Braid and A.C. Balkaran, "The Special Nature of the Common Law Action of Replevin in Manitoba" (1961), 33 Man. Bar News 125 at 133: ". . . the circumstances under which a replevin order will be made have been extended beyond that obtaining under the Common law."

[13]*The Oxford Universal Dictionary* (3d ed.) and *Webster's New World Dictionary* (3d College ed.).

[14]*Supra* n. 1, at 522.

[15]*Supra* n. 1, at 524.

replevin in former times, the purpose of the modern interim order was the restoration of the previous status quo; the return to the applicant of the possession the applicant enjoyed prior to the wrongful taking or detention allegedly committed by the respondent.

The Court also considered the argument that, in legal contexts, the word "recover" is often used in a wider sense - as, for example, in the expression "recovery of damages". The Court was persuaded, however, that, if the phrase were read in context, all ambiguity would be dispelled.

> . . . [I]t should not be overlooked that the statute deals not with the recovery of personal property, but with the recovery of its possession. Even if the word "recovery" was used loosely by the legislature, its use in conjunction with "possession" is indicative, in my view, of a legislative intent to continue replevin as a remedy for dispossession.[16]

As a result of the Court's decision in this case, it is now clearly the law in Manitoba that the interlocutory remedy of an interim order for the recovery of possession of personal property (formerly known as replevin) is not available where the applicant did not have some prior possession of the disputed property.[17]

C. Is a change in the law necessary?

Replevin remains a quick effective remedy, useful in many situations. For example, it is ideally suited for the recovery of a chattel which was leased or lent to another and not returned. However, as a result of the *Heaman* decision, most creditors will not be able to avail themselves of the remedy. This is especially true of secured creditors. Since the holders of chattel mortgages and other such security instruments almost never have had possession of the chattels in which they take security, they will not be able to seek a replevin order when they have difficulty in making a seizure. It is argued that this places secured creditors at a serious disadvantage, especially where debtors wilfully prevent a peaceable seizure. If a debtor has contractually agreed that a creditor may seize a chattel upon default of the loan (as is the case in secured transactions such as chattel mortgages), is it reasonable that the law not come to the aid of the secured creditor? What other recourse does a secured creditor have if a debtor seeks to thwart the legitimate exercise of his or her contractual rights?

Although we have some sympathy for this argument, it is ultimately one to which we cannot accede. We have reached this conclusion after considering the adequacy of other remedies which are presently available and carefully balancing the rights and reasonable expectations of debtors and creditors.

In our view, adequate alternative remedies already exist. A very real substitute for the order of replevin would be the Court's power, under section 55 of *The Court of Queen's Bench Act*, to grant "a restrictive or mandatory interlocutory injunction . . . where it appears to the judge to be just or convenient to do so." No Manitoba case seems to have considered this provision in the context of a secured transaction, but its wording would appear broad enough to permit the Court to order the debtor to hand over the chattel pending the outcome of litigation should

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[16]*Supra* n. 1, at 523.

[17]Faced with similar facts and the identical court rule, the Ontario High Court came to the same conclusion (although it must be acknowledged that the cryptic style of the judgment and the recital therein of several other circumstances, each tending to the same conclusion, rather weaken the force of this case as an authority asserting the indispensabiltiy of prior possession): *Abel/Noser Corp.* v. *C.P.M.S. Computerized Portfolio Management Services Inc.* (1987), 58 O.R. (2d) 633 (H.C.). A few other Canadian cases have granted replevin to applicants who had never enjoyed any prior possession of the disputed goods. However, most of these decisions were made without any reference to this point of law: *O'Rourke* v. *Lee* (1859), 18 U.C.Q.B. 609 (C.A.); *Van Hull* v. *Mancer*, [1944] 1 W.W.R. 114 (Man. C.A.); *Attorney-General of Canada* v. *Hoverlift Systems Ltd.* (1981), 120 D.L.R. (3d) 332 (Alta. Q.B.); *Carter* v. *Long & Bisby* (1896), 26 S.C.R. 430.

general considerations of justice and expediency so dictate. Another possibility is the interim order for the preservation of property provided for in Queen's Bench Rule 45. Since a major concern of creditors in situations of the *Heaman* type is that the debtor has time to dispose of the property and so possibly to frustrate the claim, this order has real attractions. Certainly the language of Rule 45.01(1) is very detailed, declaring that:

> The court may make an interim order for the custody or preservation of any property in question in a proceeding or relevant to an issue in a proceeding, and for that purpose may authorize entry on or into any property in the possession of a party or of a person not a party.

Presumably, the rule would be available to a creditor seeking to preserve the chattel. In this way, the creditor's security would be adequately protected, though he or she would still be unable to use or sell the chattel.[18] Finally, section 60 of *The Court of Queen's Bench Act* provides a further remedy. It permits the granting of an attaching order before judgment whereby the sheriff is directed to seize a chattel where it is alleged that the defendant ". . . has concealed, removed, assigned, transferred, conveyed, converted or otherwise disposed of the property with an intent to delay, defeat or defraud a creditor. . . ."[19]

All of these remedies preserve the status quo and prevent prejudice to the secured creditor. They do not, however, result in the immediate achievement of the secured creditor's goal: possession of the chattel. The secured creditor must await the disposition of a trial for that. This is as it should be though. As the Court of Appeal itself noted in *Heaman*, replevin

> . . . is an extraordinary remedy. The usual process, by which a plaintiff litigates his claim and obtains a remedy only if he meets with ultimate success, is reversed. A replevin claimant, often without notice and on proof of no more than a *prima facie* right to possession, gets his remedy first and only then is required to litigate his claim. . . .
>
> The justification for a replevin order is that the law is merely restoring the state of things as they were before the alleged wrong was perpetrated. That restoration having been achieved, the dispute can be resolved with the minimum of inconvenience to the party who eventually is found to be in the right.[20]

Where a legitimate dispute exists between creditor and debtor, it is not unreasonable, in light of the interim remedies which are available, that the debtor retain possession of the chattel pending trial and the court's decision. To do otherwise would actually upset the status quo. Where no legitimate dispute exists between the creditor and the debtor and the debtor is merely trying to stall the loss of the chattel, the absence of replevin is a minor gap indeed in the creditor's arsenal. The ready availability of summary judgments and expedited trials should help to frustrate any frivolous strategems or machinations undertaken by a debtor in all but the most unusual situations.[21] The other remedies referred to above should provide ample protection in the brief interim.

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[18]"Where the property is of a perishable nature or likely to deteriorate or for any other reason ought to be sold, the court may order its sale in such manner and on such terms as are just.": *Queens Bench Rules*, Rule 45.01(2).

[19]Although the words "concealed" or "converted" may be sufficient for the purpose, it might be a useful clarification of this Rule to include more specifically the situation where the defendant wilfully denies access to the property where such a right of access exists.

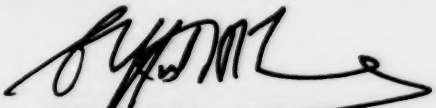
[20]*Supra* n. 1, at 524.

[21]"Where the court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the court shall grant summary judgment accordingly.": *Queen's Bench Rules*, Rule 20.03(1). Even where no request has been made for a summary judgment, the court has the discretion to order an expedited trial upon application: *Queen's Bench Rules*, Rule 20.06.

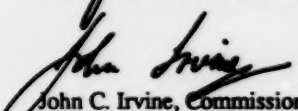
For these reasons, we do not recommend an expansion of the remedy of replevin (the interim order for the recovery of possession of personal property).

This is informal Report #20B pursuant to section 15(2) of *The Law Reform Commission Act*, C.C.S.M. c. L95.

Yours sincerely



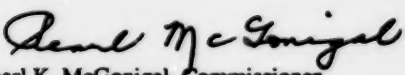
Clifford H.C. Edwards, President



John C. Irvine, Commissioner

Gerald O. Jewers, Commissioner

Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

APPENDIX D

REPORTS OF THE MANITOBA LAW REFORM COMMISSION

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#1	Jury Service for Registered Indians	April 7, 1971	An Act to Amend The Jury Act, S.M. 1971, c. 32, Royal Assent July 27, 1971
#2	Summary Disposition of Builders' and Workmen's Liens	April 13, 1971	An Act to Amend The Builders And Workmen Act, S.M. 1976, c. 22, Royal Assent June 3, 1976
#3	Disposition of Maintenance Judgments in Land Titles Offices	May 25, 1971	An Act to Amend The Judgments Act, S.M. 1972, c. 4, Royal Assent May 9, 1972
#4	An Act Respecting Billiard and Pool Rooms proposed repeal	October 19, 1971	The Statute Law Amendment Act (1974), S.M. 1974, c. 59, Royal Assent June 14, 1974 (s. 8)
#5	Recommended Right of Mortgagors to Obtain Annual Statements	October 19, 1971	An Act to Amend The Mortgage Act, S.M. 1971, c. 28, Royal Assent July 6, 1972
#6	Enactment of a Mineral Declaratory Act	December 20, 1971	The Sand and Gravel Act, S.M. 1972, c. 34, Royal Assent July 6, 1972 An Act to Amend The Mines Act S.M. 1972, c. 70, Royal Assent July 20, 1972 (s. 11) An Act to Amend The Real Property Act, S.M. 1972, c. 70, Royal Assent July 6, 1972 (ss. 15 and 16)
#7	Powers of Entry, Search and Seizure in The City of Winnipeg Act	January 24, 1972	An Act to Amend The City of Winnipeg Act S.M. 1972, c. 93, Royal Assent July 20, 1972 (ss. 26, 37, 68, 69, 89 and in part ss. 38, 39 and 63) An Act to Amend The City of Winnipeg Act, S.M. 1974, c. 73, Royal Assent June 10, 1974 (ss. 8, 11, 23-26, 28-35, 38, 97 and 98)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
1A	Auto Engine Numbers in Section 11 of The Bills of Sales Act	May 11, 1971	The Statute Law Amendment Act, S.M. 1972, c. 81, Royal Assent July 20, 1972 (s. 3)
1B	(a) Prospect of Mortgagors' Relief from Provisions of Section 20(6) of The Mortgage Act	December 29, 1971	(change not recommended)
	(b)Right to Have Mortgage Discharged Upon Payment in Full After Five Years	December 29, 1971	An Act to Amend The Real Property Act, S.M. 1972, c. 37, Royal Assent July 6, 1972 (s. 103(1))
1C	Amending provisions as to costs in Part II of The County Courts Act to avoid inconsistency with intent of this new legislation	January 12, 1972	An Act to Amend The County Courts Act, S.M. 1972, c. 38, Royal Assent July 6, 1972
First Annual Report		March 13, 1972	(not applicable)
#8	Section 45 of the Offenses Against the Person Act, 1861	July 27, 1972	An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13, Royal Assent May 25, 1973
#9	A Review of The Privacy Act with proposed amendments to the Criminal Code of Canada	September 11, 1972	(change not recommended)
#10	The Abolition of Interspousal Immunity in Tort	December 19, 1972	An Act to Amend The Married Women's Property Act, S.M. 1973, c. 12; An Act to Amend The Tortfeasors and Contributory Negligence Act, S.M. 1973, c. 13; An Act to Amend The Criminal Injuries Compensation Act, S.M. 1973, c. 23, Royal Assent May 25, 1973
2A	Comments on draft Bill to Amend The Jury Act	April 21, 1972	An Act to Amend The Jury Act, S.M. 1972, c. 56, Royal Assent July 11, 1972 (in part)
2B	Relaxation of Limit of Number of Trustees under The Trustee Act	June 22, 1972	An Act to Amend The Trustee Act, S.M. 1972, c. 60, Royal Assent July 11, 1972

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
2C	Uniformity of Definition of Age as between The Age of Majority Act (Man.) and the Criminal Code and the Interpretation Act (Can.)	August 14, 1972	(not applicable for provincial amendment)
2D	Automatic Attachment of Wages for Maintenance Orders	November 27, 1972	An Act to Amend The Garnishment Act, S.M. 1974, c. 8, Royal Assent June 10, 1974
Second Annual Report		March 20, 1973	(not applicable)
#11	The Advisability of a Good Samaritan Law	March 8, 1973	(change not recommended)
#12	Section 110 of The Real Property Act - the immortal Manitoba mortgage	April 11, 1973	An Act to Amend The Real Property Act, S.M. 1974, c. 44, Royal Assent June 10, 1974
#13	Pre-licensing Education for Real Estate Agents in Manitoba	December 3, 1973	An Act to Amend The Real Estate Brokers Act, S.M. 1975, c. 23, Royal Assent June 19, 1975
#14	Special Enduring Powers of Attorney	January 8, 1974	The Powers of Attorney Act, S.M. 1980, c. 4, Royal Assent July 9, 1980 (in part)
#15	Administration of Justice Part I - Control of Post-arrest/pre-trial detention	February 26, 1974	Administration of the Public Safety Building in Winnipeg assumed by the Province of Manitoba, effective October 1, 1977; now called The Winnipeg Remand Centre.
3A	Conferring of matrimonial jurisdiction upon a County Court Judge as a local Judge of The Queen's Bench within the Eastern Judicial District	March 30, 1973	An Act to Amend The Queen's Bench Act, S.M. 1978, c. 28, Royal Assent July 20, 1978
3B	Correcting recent error in s. 51 of The Queen's Bench Act	September 26, 1973	An Act to Amend The Queen's Bench Act, S.M. 1974, c. 15, Royal Assent June 10, 1974

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
3C	Conferring jurisdiction to extend time for payment of fines upon provincial judges other than those who imposed such fines	October 16, 1973	(not applicable for provincial enactment)
3D	Up-dating index to Statutes of Manitoba	October 23, 1973	Indexing commenced; computer search of statutes now available
3E	Repeal of Section 212 of The Liquor Control Act	December 19, 1973	Substantial acceptance under s. 16 of an Act to Amend The Liquor Control Act, S.M. 1974, c. 63, Royal Assent June 14, 1974
Third Annual Report		April, 1974	(not applicable)
#16	Definition of Death	May 6, 1974	An Act to Amend The Vital Statistics Act, S.M. 1975, c. 5, Royal Assent June 19, 1975
#17	An International Form of Wills for Manitobans	May 6, 1974	An Act to Amend The Wills Act, S.M. 1975, c. 6, Royal Assent June 19, 1975
#18	The Rule in Saunders v. Vautier	January 8, 1975	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38, Royal Assent August 18, 1983 (s. 4)
#19	The Administration of Justice in Manitoba Part II - Review of The Jury System	February 11, 1975	An Act to Amend The Jury Act, S.M. 1977, c. 18, Royal Assent June 18, 1977 (in part)
4A	Interprovincial Subpoenas	January 27, 1975	The Interprovincial Subpoena Act, S.M. 1975, c. 3, Royal Assent June 19, 1975
4B	Enforcement of Custody Orders	January 27, 1975	The Extra-Provincial Custody Orders Enforcement Act, S.M. 1975, c. 4, Royal Assent June 19, 1975
4C	Statutory Sums	February 11, 1975	Various amendments to Manitoba Statutes (in part)
Fourth Annual Report		April, 1975	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#20	The Highway Traffic Act	June 16, 1975	An Act to Amend The Highway Traffic Act, S.M. 1977, c. 34, Royal Assent June 18, 1977 (in part) An Act to Amend The Highway Traffic Act and The Tortfeasors and Contributory Negligence Act, S.M. 1980, c. 19, Royal Assent July 9, 1980
#21	The Administration of Justice in Manitoba Part III - Consolidation of Extra-Provincial Judgment Enforcement	January 28, 1976	-
#22	Some Aspects of Fire Insurance Legislation in Manitoba	February 9, 1976	An Act to amend The Insurance Act, S.M. 1982, c. 11,, Royal Assent May 25, 1982 (s. 1) (in part)
#23	Family Law - Part I The Support of Obligation	February 27, 1976	The Family Maintenance Act, S.M. 1978, c. 25, Royal Assent July 20, 1978 (in part)
#24	Family Law - Part II Property Disposition	February 27, 1976	An Act to Amend The Gift Tax Act (Manitoba) and The Succession Duty Act (Manitoba), S.M. 1977, (2nd Session), c. 2, Royal Assent December 12, 1977 The Marital Property Act, S.M. 1978, c. 24, Royal Assent July 20, 1978 (in part) An Act to Amend various Acts relating to Marital Property, S.M. 1978, c. 27, Royal Assent July 20, 1978 (in part) An Act to Amend The Wills Act, S.M. 1980, c. 7, Royal Assent July 9, 1980
5A	Limitation of Actions for the taking away, conversion or detention of chattels	May 26, 1975	An Act to Amend The Fatal Accidents Act and Limitation of Actions Act, S.M. 1976, c. 41, Royal Assent June 11, 1976 (ss. 2-4)
Fifth Annual Report		March 29, 1976	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#25	The Case for a Provincial Bill of Rights	May 19, 1976	-
#26	Revision of Birth Certificates of Trans-sexual persons	September 13, 1976	The Vital Statistics Act, S.M. 1982-83-84, c. 58, Royal Assent August 18, 1983
Sixth Annual Report		March 14, 1977	(not applicable)
7A	The Local Authorities Election Act	May 31, 1977	An Act to Amend The Local Authorities Election Act, S.M. 1980, c. 48, Royal Assent July 29, 1980
Seventh Annual Report		March 1, 1978	(not applicable)
#27	Limitation of Actions: Time Extensions for Children, Disabled Persons and Others	January 8, 1979	An Act to Amend The Limitation of Actions Act, S.M. 1980, c. 28, Royal Assent July 29, 1980
#28	Enforcement of Judgments Part I: Exemptions under The Garnishment Act	January 8, 1979	An Act to Amend The Garnishment Act, S.M. 1979, c. 8, Royal Assent May 11, 1979
#29	Emergency Apprehension, Admissions and Rights of Patients under The Mental Health Act	February 12, 1979	An Act to Amend The Mental Health Act, S.M. 1980, c. 62, Royal Assent July 29, 1980 (in part)
#30	Confidentiality of Adoption Records	February 12, 1979	An Act to Amend The Child Welfare Act, S.M. 1979, c. 22, Royal Assent June 15, 1979 (s. 60) An Act to Amend The Child Welfare Act, S.M. 1980, c. 41, Royal Assent July 29, 1980 Establishment of a Post-adoption Registry
8A	Section 5(1) of The Social Allowances Act	March 30, 1978	The Statute Law Amendment Act (1984), S.M. 1984, c. 17, s. 29
Eighth Annual Report		February 12, 1979	(not applicable)
#31	Political Financing and Election Expenses	August 13, 1979	The Elections Finances Act, S.M. 1980, c. 68, Royal Assent July 29, 1980

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#32	Mechanics' Liens Legislation	August 13, 1979	The Builders' Liens Act, S.M. 1980-81, c. 7, Royal Assent May 26, 1981
#33	Enforcement of Revenue Statutes	August 13, 1979	The Charter Compliance Statute Amendment Act, S.M. 1985, c. 50, Royal Assent July 11, 1985 (in part)
#34	Enforcement of Judgments Part III: Exemptions under the Executions Act	October 22, 1979	An Act to Amend The Executions Act, S.M. 1980, c. 55, Royal Assent July 29, 1980
#35	Estate Claims for Loss of Expectation of Life	October 22, 1979	An Act to Amend The Fatal Accidents Act and The Trustee Act, S.M. 1980, c. 5, Royal Assent July 9, 1980
#36	Improved Methods of Enforcing Support Orders Against Real Property	November 19, 1979	The Family Law Amendment Act, S.M. 1980, c. 54, Royal Assent July 19, 1980 (in part)
#37	Systems of Voter Registration	November 26, 1979	The Elections Act, S.M. 1980, c. 67, Royal Assent July 29, 1980
#38	The One Year Rule for Enforcement of Arrears in Maintenance	January 21, 1980	An Act to Amend The Family Maintenance Act and The Queen's Bench Act, S.M. 1980, c. 21, Royal Assent July 9, 1980
9A	The Fire Departments Arbitration Act	April 17, 1979	An Act to Amend The Fire Departments Arbitration Act, S.M. 1980, c. 27, Royal Assent July 29, 1980
9B	Section 7 of The Payment of Wages Act	August 15, 1979	An Act to Amend The Payment of Wages Act, S.M. 1980, c. 57, Royal Assent July 29, 1980 (in part)
9C	The Seduction Act	October 22, 1979	The Equality of Status Act, S.M. 1982, c. 10, Royal Assent May 25, 1982
9D	Section 9 of The Manitoba Evidence Act	November 6, 1979	An Act to Amend The Manitoba Evidence Act, S.M. 1980, c. 26, Royal Assent July 19, 1980
9E	The Wills Act and Ademption	November 20, 1979	An Act to Amend The Wills Act, S.M. 1980, c. 7, Royal Assent July 9, 1980
9F	The term "illegitimate"	December 4, 1979	(change not recommended)
Ninth Annual Report		February 25, 1980	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#39	Controverted Elections	April 21, 1980	-
#40	Enforcement of Judgments Part II: Exemptions under The Judgments Act	April 21, 1980	-
#41	The Statute of Frauds	August 11, 1980	An Act to repeal the Statute of Frauds, S.M. 1982-83-84, c. 34, Royal Assent August 18, 1983
#42	Occupiers' Liability	August 11, 1980	The Occupiers' Liability Act, S.M. 1982-83-84, c. 29, Royal Assent August 18, 1983; The Statute Law Amendment Act (1984), S.M. 1984, c. 17, Royal Assent June 29, 1984 (s. 28)
#43	The Wills Act and the Doctrine of Substantial Compliance	September 8, 1980	The Wills Act, S.M. 1982-83-84, c. 31, Royal Assent August 18, 1983
#44	The General Register	September 22, 1980	The Real Property Act and Various Other Acts Amendment Act, S.M. 1987, c. 27, Royal Assent July 17, 1987
#45	Simplified Mortgage	December 15, 1980	(legislative amendment not required)
10A	Municipal Assessment of Personal Property	February 26, 1980	(referred to Special Committee)
10B	The Marriage Settlement Act	October 9, 1980	The Statute Law Amendment Act, S.M. 1980-81, c. 26, Royal Assent May 26, 1981 (s. 22)
Tenth Annual Report		February 16, 1981	(not applicable)
#46	Conflict of Interest of Municipal Councillors	January 4, 1982	The Municipal Conflict of Interest Act, S.M. 1982-83-84, c. 44, Royal Assent August 18, 1983
#47	Prejudgment Compensation on Money Awards: Alternatives to Interest	January 4, 1982	The Judgment Interest and Discount Act, S.M. 1986, c. 39, Royal Assent Sept. 10, 1986 (implemented in principle) (now contained in Part XIV of The Court of Queen's Bench Act)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#48	Prescriptive Easements and Profits-à-prendre	January 18, 1982	-
#49	The Rules Against Accumulations and Perpetuities	February 12, 1982	The Perpetuities and Accumulations Act, S.M. 1982-83-84, c. 43, Royal Assent August 18, 1983
#50	Investment Provisions under The Trustee Act	February 12, 1982	An Act to Amend The Trustee Act, S.M. 1982-83-84, c. 38, Royal Assent August 18, 1983
11A	Parents' Maintenance Legislation	March 3, 1981	-
11B	Provincial Offences Procedures	June 29, 1981	An Act to Amend The Summary Convictions Act, S.M. 1982, c. 24, Royal Assent June 30, 1982
11C	The Remembrance Day Act	January 28, 1982	-
Eleventh Annual Report		February 14, 1982	(not applicable)
#51	The Survivorship Act	September 7, 1982	The Survivorship Act, S.M. 1982-83-84, c. 28, Royal Assent August 18, 1983
#52	Structure of the Courts, Part I: Amalgamation of the Court of Queen's Bench and the County Courts of Manitoba	October 25, 1982	An Act to amend The Queen's Bench Act and to repeal The County Courts Act, The Surrogate Courts Act and The County Court Judges' Criminal Courts Act and to amend The Municipal Boundaries Act, S.M. 1982-83-84, c. 82, Royal Assent August 18, 1983 The Court of Queen's Bench Small Claims Practices Act, S.M. 1982-83-84, c. 83, Royal Assent August 18, 1983 The Court of Queen's Bench Surrogate Practice Act, S.M. 1982-83-84, c. 84, Royal Assent August 18, 1983 An Act to amend Various Acts of the Legislature to facilitate the Reorganization and Expansion of the Court of Queen's Bench, S.M. 1982-

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
			83-84, c. 85, Royal Assent August 18, 1983
#53	The Law of Domicile	December 1, 1982	The Domicile and Habitual Residence Act, S.M. 1982-83-84, c. 80, Royal Assent August 18, 1983
#54	Certificate of Lis Pendens	February 1, 1983	The Court of Queen's Bench Act, S.M. 1988-89, c. 4, Royal Assent November 16, 1988 (s. 58)
#55	Structure of the Courts, Part II: The Adjudication of Smaller Claims	March 7, 1983	The Statute Law Amendment Act (1985), S.M. 1985, c. 51, Royal Assent July 11, 1985 (in part)
Twelfth Annual Report		April 11, 1983	(not applicable)
#56	Medical Privilege	October 4, 1983	-
#57	Uniform Sale of Goods Act	November 1, 1983	-
Thirteenth Annual Report		April 2, 1984	(not applicable)
#58	Administrative Law; Part I: Procedures of Provincial Government Agencies	June 29, 1984	(legislative amendment not required); implementation, in part, through governmental policy
#59	Breach of Promise to Marry	October 1, 1984	The Family Law Amendment Act, S.M. 1987, c. 21, Royal Assent July 17, 1987
#60	An Examination of The Dower Act	November 19, 1984	-
#61	Intestate Succession	March 25, 1985	The Intestate Succession and Consequential Amendments Act, S.M. 1989-90, c. 43
14A	Jactitation of Marriage	October 5, 1984	The Family Law Amendment Act, S.M. 1987, c. 21, Royal Assent July 17, 1987
Fourteenth Annual Report		April 2, 1985	(not applicable)

	Subject	Date Submitted	Original legislation implementing Commission's Recommendations
#62	Small Projects 1) Section 6 of The Mercantile Law Amendment Act 2) The Rule in Shelley's Case 3) Permissive and Equitable Waste	October 7, 1985	-
#63	The Testators Family Maintenance Act	December 16, 1985	The Dependants Relief Act, S.M. 1989-90, c. 42
#64	The Married Women's Property Act and Related Matters	December 16, 1985	-
#65	Section 83 of The Queen's Bench Act	March 31, 1986	The Statute Law Amendment Act (1986), S.M. 1986-87, c. 19, Royal Assent September 10, 1986 (s. 12)
#66	The Human Tissue Act	March 31, 1986	The Human Tissue Act, S.M. 1987, c. 39, Royal Assent July 17, 1987; The Human Tissue Amendment Act, S.M. 1989-90, c. 28 An Act to Amend The Anatomy Act, S.M. 1987, c. 57, Royal Assent July 17, 1987
15A	Section 300 of The Liquor Control Act	June 17, 1985	-
Fifteenth Annual Report		May 6, 1986	(not applicable)
#67	Sections 33 and 34 of The Wills Act	June 16, 1986	The Statute Law Amendment Act (1987), S.M. 1987, c. 66, Royal Assent July 17, 1987 (s. 25); The Wills Amendment Act, S.M. 1989-90, c. 44
#68	Periodic Payment of Damages	March 31, 1987	-
#69	Administrative Law, Part II: Judicial Review of Administrative Action	March 31, 1987	-

Subject	Date Submitted	Original legislation implementing Commission's Recommendations
Sixteenth Annual Report	April 13, 1987	(not applicable)
17A The Wages Recovery Act	September 9, 1987	-
Seventeenth Annual Report	September 14, 1988	(not applicable)
#70 The Manitoba Law Reform Commission: A Framework for the Future	November 23, 1988	The Law Reform Commission Act, S.M. 1989-90, c. 25
#71 The Bulk Sales Act	December 21, 1988	-
Eighteenth Annual Report	August 8, 1989	(not applicable)
#72 The Independence of Provincial Judges	June 28, 1989	The Provincial Court Amendment Act, S.M. 1989-90, c. 34
Nineteenth Annual Report	May 15, 1990	(not applicable)
#73 Statutory Designations and The Retirement Plan Beneficiaries Act	October 23, 1990	-
20A Limitation of Actions Brought by the Crown	September 27, 1990	-
20B Replevin and the Need for Prior Possession	January 28, 1991	-